

AMENDED IN SENATE APRIL 22, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996
AMENDED IN ASSEMBLY MARCH 25, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2086

Introduced by Assembly Member Knowles

January 22, 1996

~~An act to amend Sections 10081, 10086, 10086.5, 10089.5, 10089.6, 10089.7, 10089.10, 10089.11, 10089.13, 10089.14, 10089.15, 10089.19, 10089.20, 10089.23, 10089.25, 10089.28, 10089.30, 10089.33, 10089.35, 10089.36, 10089.40, 10089.41, and 10089.50 of, to amend and renumber Sections 10089.7 and 10089.15 of, to add Sections 10089.21, 10089.22, 10089.31, 10089.52, and 10089.53 to, and to repeal Sections 10089.18, 10089.29, and 10089.37, 10089.38, and 10089.39 of, the Insurance Code, relating to earthquake insurance, making an appropriation therefor. An act to amend Sections 10089.5, 10089.6, 10089.7, 10089.10, 10089.11, 10089.13, 10089.14, 10089.15, 10089.20, 10089.23, 10089.25, 10089.26, 10089.28, 10089.30, 10089.35, 10089.40, 10089.41, and 10089.50 of, to amend and renumber Section 10089.15 of, to add Sections 10089.21, 10089.22, 10089.31, 10089.52, and 10089.53 to, and to repeal Sections 10089.29 and 10089.33 of, the Insurance Code, relating to earthquake insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as amended, Knowles. Earthquake insurance: California Earthquake Authority.

Existing law creates the California Earthquake Authority, which is authorized to become operational and issue policies of basic residential earthquake insurance, as defined, under certain conditions. These conditions include a determination by the Internal Revenue Service that the authority is exempt from federal income tax, a requirement for certain commitments from insurers and reinsurers, and enactment of a subsequent statute that expressly authorizes the authority to issue policies of earthquake insurance.

This bill would provide that these conditions have been met and would specifically authorize the authority to become operational and issue policies of basic residential earthquake insurance.

This bill would also:

(1) Change the definition of “available capital” relative to the authority, and the definition of “basic residential earthquake insurance,” as specified.

(2) Limit investments of the authority to certain securities, as specified.

(3) Provide that the duties the authority owes its insured shall be the same as those an insurer owes its insureds under common laws and statutes, and cap the operating expenses of the authority at not more than 2% of premium income.

(4) Provide that there shall be a limited civil immunity on account of any act performed or omitted or obligation entered into on the part of the authority's governing board, advisory panel, or any member of either.

(5) Provide for claims against the authority and indemnification by the authority of participating insurers, as specified.

(6) Provide that the rights provided under Proposition 103 for persons to initiate or intervene in certain proceedings apply to proceedings relative to the establishment of earthquake insurance rates.

(7) Declare that the authority is a public instrumentality of the state, exercising an essential state function.

(8) Prohibit the authority from becoming a debtor under the United States bankruptcy laws.

(9) Continuously appropriate funds in the California Earthquake Authority Fund for the purposes of the authority, thereby making an appropriation.

(10) Delete existing provisions that would have provided for the reduction and eventual elimination of assessments by the authority of participating insurers, as specified, and instead provide for reduction of the authorized initial assessment to zero if the average daily balance of the authority's available capital exceeds \$4 billion for any 30-day period after the authority has been operative for 10 or more years.

(11) Provide for the authority to issue loss assessment policies for individual condominium units and require the authority to offer a basic residential earthquake policy with a deductible of 10% of the policy limits, in addition to enhanced contents coverage, under certain conditions, as specified.

(12) Specify the duty of an agency or broker to investigate the financial condition of the authority before placing a policy of insurance, as specified.

(13) Add provisions with respect to the powers and duties of the Insurance Commissioner, including authority to seek court orders to protect the authority under certain circumstances, and relating to various financial provisions.

(14) Require an insurer that withdraws from the authority under certain circumstances to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.

(15) Provide that if legislation is enacted that causes the authority to cease operations while debt of the authority is outstanding, participating insurers would be required to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.

The bill would also enact other related provisions.

The bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Under existing law, a policy of residential property insurance may not be issued or delivered or, under certain circumstances, initially renewed by any insurer unless the~~

~~named insured is offered coverage for loss or damage caused by an earthquake, as specified. If an offer of earthquake coverage is accepted, the coverage must be continued at the applicable rates and conditions for the policy term, if the residential property insurance policy is not terminated by the named insured or the insurer. At any renewal, an insurer may modify the terms and conditions of an existing policy to provide only the minimum coverage required by law as a result of the enactment of Chapter 939 of the Statutes of 1995, as specified. Additionally, under existing law, an insurer must offer earthquake coverage every other year to an insured in connection with any continuation, renewal, or reinstatement of a policy, as specified.~~

~~This bill would eliminate the requirement for insurers that do not participate in the California Earthquake Authority to offer earthquake coverage, except that nonparticipating insurers would be required to maintain in force existing policies for at least 3 years, as specified. Insurers that participate in the authority would continue to be required to offer earthquake coverage, which would be provided through the authority.~~

~~This bill would also eliminate the requirement for insurers to offer earthquake coverage every other year to residential policyholders who do not accept an offer of earthquake coverage.~~

~~(2) Existing law provides that an insurer may not refuse to renew, reject, or cancel a policy of residential property insurance after an insured has accepted an offer of earthquake insurance solely because the insured has accepted that offer, unless the policy is terminated by the insured.~~

~~This bill would provide that an insurer may refuse to renew a policy if the decision to refuse is based on sound underwriting principles, if the commissioner finds that the exposure to potential losses will threaten the solvency of the insurer or place the insurer in a hazardous condition, if the insurer has a reduced opportunity to obtain reinsurance, or for other specified grounds.~~

~~(3) Existing law creates the California Earthquake Authority, which is authorized to become operational and issue policies of basic residential earthquake insurance, as~~

~~defined, under certain conditions. These conditions include a determination by the Internal Revenue Service that the authority is exempt from federal income tax, a requirement for certain commitments from insurers and reinsurers, and enactment of a subsequent statute that expressly authorizes the authority to issue policies of earthquake insurance.~~

~~This bill would provide that these conditions have been met and would specifically authorize the authority to become operational and issue policies of basic residential earthquake insurance.~~

~~This bill would also:~~

~~(A) Change the definition of “available capital” relative to the authority, as specified.~~

~~(B) Limit investments of the authority to certain securities, as specified.~~

~~(C) Delete provisions that deem the authority to be an insurer for the purposes of the Insurance Code but provide that the duties the authority owes its insured shall be the same as those an insurer owes its insureds under common laws and statutes.~~

~~(D) Provide that there shall be a limited immunity on account of any act performed or omitted or obligation entered into on behalf of the authority on the part of the authority’s governing board, advisory panel, or any officer, employee, or agent of the authority, or on the part of any participating insurer.~~

~~(E) Require advocacy fees awarded to persons initiating or intervening in any judicial, quasi-judicial, or administrative proceeding related to earthquake insurance rates to be paid from the annual budget of the Department of Insurance, as specified.~~

~~(F) Declare that the authority is a public instrumentality of the state, exercising an essential state function.~~

~~(G) Prohibit the authority from becoming a debtor under the United States bankruptcy laws and provide that claims against the authority are to be governed under existing provisions of the Government Code.~~

~~(H) Continuously appropriate funds in the California Earthquake Authority Fund for the purposes of the authority, thereby making an appropriation.~~

~~(I) Provide that an agent or broker shall have no responsibility or duty to investigate the financial condition of the authority before binding coverage, and provide that the duty of an agent or broker to investigate the financial condition of the authority before placement of insurance shall be the same as the duty to investigate the financial condition of an admitted insurer before placement of a policy of insurance.~~

~~(J) Add provisions with respect to the powers and duties of the Insurance Commissioner, including authority to seek court orders to protect the authority under certain circumstances, and relating to various financial provisions.~~

~~(K) Repeal provisions requiring the authority to use a portion of investment income to fund the establishment and operation of the Earthquake Loss Mitigation Fund for grants and loans to dwelling owners to retrofit their homes to protect against earthquake damage.~~

~~(L) Require an insurer that withdraws from the authority under certain circumstances to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.~~

~~(M) Provide that if legislation is enacted that causes the authority to cease operations while debt of the authority is outstanding, participating insurers would be required to impose a premium surcharge on earthquake policies to be used by the authority to repay debt.~~

~~The bill would also enact other related provisions.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — (a) The Legislature finds and declares~~
- 2 *SECTION 1. The Legislature finds and declares as*
- 3 *follows:*
- 4 *(a) The California Earthquake Authority, created by*
- 5 *Chapter 944 of the Statutes of 1995, shall become*
- 6 *operational and may issue policies of basic residential*
- 7 *earthquake insurance as soon as practicable.*

1 ***(b) The Insurance Commissioner has certified that all***
2 ***of the conditions, imposed by the Legislature by Chapter***
3 ***944 of the Statutes of 1995, have been met, as follows:***

4 ***(1) The Internal Revenue Service has determined that***
5 ***the authority is exempt from federal income taxation.***

6 ***(2) Insurers whose cumulative residential market***
7 ***share is more than 75 percent of the total residential***
8 ***property insurance market in California, exclusive of***
9 ***insurers who have withdrawn from the residential***
10 ***property insurance market as of January 1, 1995, have***
11 ***filed letters of intent, with no binding contractual***
12 ***obligation, to participate in the authority. These letters of***
13 ***intent include acknowledgment of the initial operating***
14 ***capital and potential loss assessment requirements.***

15 ***(3) The authority has obtained appropriate risk***
16 ***transferability in the form of firm reinsurance***
17 ***commitments in an aggregate amount of not less than 200***
18 ***percent of the total capital contributions committed by***
19 ***participating insurers.***

20 ***SEC. 2. Section 10089.5 of the Insurance Code is***
21 ***amended to read:***

22 ***10089.5. As used in this chapter:***

23 ***(a) "Authority" means the California Earthquake***
24 ***Authority.***

25 ***(b) "Available capital" means the sum of all moneys***
26 ***and invested assets, ~~in excess of two hundred million~~***
27 ***dollars ~~(\$200,000,000)~~ actually held in the California***
28 ***Earthquake Authority Fund, except as otherwise***
29 ***~~appropriated~~ allocated to pay specific losses and loss***
30 ***adjustment expenses under policies of basic residential***
31 ***earthquake insurance. "Available capital" includes all***
32 ***interest or other income from the investment of money***
33 ***held in the California Earthquake Authority Fund.***
34 ***"Available capital" does not include the proceeds of***
35 ***contracts of reinsurance procured by or in the name of***
36 ***the authority pursuant to subdivision (a) of Section***
37 ***10089.10, or any funds realized on account of any***
38 ***transaction pursuant to capital market contracts***
39 ***authorized by subdivision (b) of Section 10089.10.***

(c) “Basic residential earthquake insurance” means that policy of residential earthquake insurance described in Section 10089, *except that the policy issued by the authority shall provide not less than five thousand dollars (\$5,000) in contents coverage, less the applicable deductible, and not less than four thousand dollars (\$4,000) in coverage for additional living expenses.*

(d) “Board” means the governing board of the authority.

(e) “Bonds” means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) “Capital market contract” means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) “Panel” means the advisory panel of the authority.

(h) “Policy of residential property insurance” means those policies described in Section 10087.

(i) “Private capital market” means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(j) “Qualifying residential property” includes all those residential dwellings set forth in Section 10087.

(k) “Residential earthquake insurance market share” means an individual insurer’s total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(l) “Residential property insurance market share” means an individual insurer’s total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

1 (m) “Revenue” means all income and receipts of the
2 authority, including, but not limited to, income and
3 receipts derived from *premiums*, bond purchase
4 agreements, capital contributions by insurers,
5 assessments levied on insurers, surcharges applied to
6 authority earthquake policyholders, and all interest or
7 other income from investment of money in any fund or
8 account of the authority established for the payment of
9 principal or interest, or premiums on bonds, including
10 reserve funds.

11 *SEC. 3. Section 10089.6 of the Insurance Code is*
12 *amended to read:*

13 10089.6. (a) There is hereby created the California
14 Earthquake Authority, which shall be administered
15 under the authority of the commissioner and have the
16 powers conferred by this chapter. The authority shall be
17 authorized to transact insurance in this state as necessary
18 to sell policies of basic residential earthquake insurance
19 in the manner set forth in Sections 10089.26, 10089.27, and
20 10089.28. The authority shall have no authority to transact
21 any other type of insurance business. ~~No policies shall be~~
22 ~~issued by the authority until enactment of the legislation~~
23 ~~specified in Section 1 of the act enacting this section.~~

24 (b) ~~The investments of the authority shall be limited~~
25 ~~to those securities eligible under Section 16430 of the~~
26 ~~Government Code. The duties owed by the authority to~~
27 ~~its insureds shall be deemed to be an insurer for purposes~~
28 ~~of the Insurance Code and the duties owed an insured the~~
29 ~~same as duties owed by insurers to insureds under~~
30 common law and statutes.

31 (c) ~~The authority shall be deemed an insurer for~~
32 ~~purposes of the Insurance Code, except that the authority~~
33 ~~shall be excused from complying with reporting~~
34 ~~requirements specified in Sections ____.~~

35 (d) ~~The operating expenses of the authority shall be~~
36 ~~capped at not more than 2 percent of the premium~~
37 ~~income received by the authority.~~

38 *SEC. 4. Section 10089.7 of the Insurance Code, as*
39 *added by Section 2 of Chapter 944 of the Statutes of 1995,*
40 *is amended to read:*

1 10089.7. (a) The authority shall be governed by a
2 three-member governing board consisting of the
3 Governor, the Treasurer, and the Insurance
4 Commissioner, each of whom may name designees to
5 serve as board members in their place. The Speaker of the
6 Assembly and the Chairperson of the Senate Rules
7 Committee shall serve as nonvoting, ex officio members
8 of the board, and may name designees to serve in their
9 place.

10 (b) The board shall be advised by an advisory panel
11 whose members shall be appointed by the commissioner,
12 except as provided in this subdivision. The advisory panel
13 shall consist of four members who represent insurance
14 companies that are licensed to transact fire insurance in
15 the state, two licensed insurance agents, one seismologist,
16 one person expert in construction requirements and
17 building codes, and two members of the public not
18 connected with the insurance industry, *at least one of*
19 *whom shall be a consumer representative*. In addition,
20 the Governor, the Speaker of the Assembly, and the
21 Chairperson of the Senate Rules Committee may each
22 appoint one member of the public not connected with
23 the insurance industry. Panel members shall serve for
24 two-year terms, which may be staggered for
25 administrative convenience, and panel members may be
26 reappointed. The commissioner shall be a nonvoting, ex
27 officio member of the panel and shall be entitled to attend
28 all panel meetings, either in person or by representative.

29 (c) The board shall have the power to conduct the
30 affairs of the authority and may perform all acts necessary
31 or convenient in the exercise of that power. Without
32 limitation, the board may: (1) employ or contract with
33 officers and employees to administer the authority; (2)
34 retain outside actuarial, geological, and other
35 professionals; (3) enter into other obligations relating to
36 the operation of the authority; (4) invest the moneys in
37 the California Earthquake Authority Fund; (5) obtain
38 reinsurance and financing for the authority as authorized
39 by this chapter; (6) contract with participating insurers
40 to service the policies of basic residential earthquake

1 insurance issued by the authority; (7) issue bonds payable
 2 from and secured by a pledge of the authority of all or any
 3 part of the revenues of the authority to finance the
 4 activities authorized by this chapter and sell those bonds
 5 at public or private sale in the form and on those terms
 6 and conditions as the Treasurer shall approve; (8) pledge
 7 all or any part of the revenues of the authority to secure
 8 bonds and any repayment or reimbursement obligations
 9 of the authority to any provider of insurance or a
 10 guarantee of liquidity or credit facility entered into to
 11 provide for the payment of debt service on any bond of
 12 the authority; (9) employ and compensate bond counsel,
 13 financial consultants, and other advisers determined
 14 necessary by the Treasurer in connection with the
 15 issuance and sale of any bonds; (10) issue or obtain from
 16 any department or agency of the United States or of this
 17 state, or any private company, any insurance or
 18 guarantee of liquidity or credit facility determined to be
 19 appropriate by the Treasurer to provide for the payment
 20 of debt service on any bond of the authority; (11) engage
 21 the commissioner to collect revenues of the authority;
 22 (12) issue bonds to refund or purchase or otherwise
 23 acquire bonds on terms and conditions as the Treasurer
 24 shall approve; and (13) perform all acts that relate to the
 25 function and purpose of the authority, whether or not
 26 specifically designated in this chapter.

27 (d) The authority shall reimburse board and panel
 28 members for their reasonable expenses incurred in
 29 attending meetings and conducting the business of the
 30 authority.

31 (e) (1) There shall be *a limited civil immunity and no*
 32 ~~civil or~~ criminal liability in a private capacity, on account
 33 of any act performed or omitted or obligation entered
 34 into *in* an official capacity, when done or omitted in good
 35 faith and without intent to defraud, on the part of the
 36 board, the panel, or any member of either, or on the part
 37 of any officer, employee, or agent of the authority. *This*
 38 *provision shall not eliminate or reduce the responsibility*
 39 *of the authority under the covenant of good faith and fair*
 40 *dealing.*

1 (2) *In any claim against the authority based upon an*
2 *earthquake policy issued by the authority, the authority*
3 *shall be liable for any damages, including damages under*
4 *Section 3394 of the Civil Code, for a breach of the*
5 *covenant of good faith and fair dealing by the authority*
6 *or its agents.*

7 *In any claim based upon an earthquake policy issued by*
8 *the authority, the participating carrier shall be liable for*
9 *any damages for a breach of a common law or statutory*
10 *duty as if it were a contracting insurer. The authority shall*
11 *indemnify the participating carrier from any liability*
12 *resulting from the authority's actions or directives taken*
13 *or made in bad faith.*

14 (3) No licensed insurer, its officers, directors,
15 employees, or agents, shall have any antitrust civil or
16 criminal liability under the Cartwright Act (Part 2
17 commencing with Section 16600) of Division 7 of the
18 Business and Professions Code) by reason of its activities
19 conducted in compliance with this chapter. Further, the
20 California Earthquake Authority shall be deemed a joint
21 arrangement established by statute to ensure the
22 availability of insurance pursuant to subdivision (b) of
23 Section 1861.03.

24 (4) *Subject to the provisions of Section 10089.21,*
25 *nothing in this chapter shall be construed to limit any*
26 *exercise of the commissioner's power, including*
27 *enforcement and disciplinary actions, or the imposition of*
28 *finest and orders to ensure compliance with this chapter,*
29 *the rules and guidelines of the authority, or any other law*
30 *or rule applicable to the business of insurance.*

31 (f) The Attorney General, in his or her discretion, shall
32 provide a representative of his or her office to attend and
33 act as antitrust counsel at all meetings of the panel. The
34 Attorney General shall be compensated for legal service
35 rendered in the manner specified in Section 11044 of the
36 Government Code.

37 (g) The authority may sue or be sued and may employ
38 or contract with that staff and those professionals the
39 board deems necessary for its efficient administration.

1 (h) (1) The authority may contract for the services of
 2 a chief executive officer, a chief financial officer, and an
 3 operations manager, and may contract for the services of
 4 reinsurance intermediaries, financial market
 5 underwriters, modeling firms, a computer firm, an
 6 actuary, an insurance claims consultant, counsel, and
 7 private money managers. These contracts shall not be
 8 subject to otherwise applicable provisions of the
 9 Government Code and the Public Contract Code, and for
 10 those purposes, the authority shall not be considered a
 11 state agency or other public entity. Other employees of
 12 the authority shall be subject to civil service provisions.

13 (2) *When the authority hires multiple private money*
 14 *managers to manage the assets of the California*
 15 *Earthquake Authority Fund, other than the primary*
 16 *custodian of the securities, the authority shall consider*
 17 *small California-based firms who are qualified to manage*
 18 *the money in the fund. The purpose of this provision is to*
 19 *prevent the exclusion of small qualified investment firms*
 20 *solely because of their size.*

21 (i) Members of the board and panel, and their
 22 designees, and the chief executive officer, the chief
 23 financial officer, and the operations manager of the
 24 authority shall be required to file financial disclosure
 25 statements with the Fair Political Practices Commission.
 26 The appointing authorities for members and designees of
 27 the board and panel shall, when making appointments,
 28 avoid appointing persons with conflicts of interest.
 29 Section 87406 of the Government Code, the Milton Marks
 30 Postgovernment Employment Restrictions Act of 1990,
 31 shall apply to the authority. Members of the panel shall be
 32 deemed to be designated employees for the purpose of
 33 that act. In addition, no person who is employed as a
 34 regular or contract employee of the authority shall, upon
 35 leaving the employment of the authority, seek, accept, or
 36 enter into employment or a consulting or other
 37 contractual arrangement for the period of one year with
 38 any employer or entity that entered into an agreement
 39 with the authority during the time the employee was
 40 employed by the authority.

(j) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the board and the panel.

SEC. 5. Section 10089.10 of the Insurance Code is amended to read:

10089.10. To expand the capacity of the authority and achieve maximum capacity for writing earthquake coverage, the authority shall do both of the following acts, on prior approval of the commissioner:

(a) The authority shall purchase contracts of reinsurance at rates and on terms the board considers reasonable and appropriate.

~~(b) Under the commissioner's continued, active supervision, the~~ The authority, through the Treasurer, shall enter capital market contracts on terms as the board and Treasurer may consider reasonable and appropriate. ~~The Treasurer shall not withhold approval except for good cause.~~

(c) The total annual expenditure for reinsurance contracts and capital market contracts pursuant to this section shall not exceed a reasonable and appropriate percentage of the annual earthquake insurance premiums collected by the authority.

SEC. 6. Section 10089.11 of the Insurance Code is amended to read:

10089.11. (a) The commissioner shall adopt regulations to implement the provisions of this chapter within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Regulations shall specify procedures for ratemaking and forms approval, define the type and quality of investments the authority is authorized to

1 make, define coverage types and limits, set forth
2 producer compensation rates, and specify the procedures
3 to be followed by the authority following any earthquake
4 event where the magnitude of earthquake losses make it
5 likely that prorated benefits may be paid. The regulations
6 shall be consistent with the requirements of Proposition
7 103.

8 ~~(c) Any person may initiate or intervene in any~~
9 ~~proceeding permitted or established pursuant to this~~
10 ~~chapter, may challenge any action of the commissioner~~
11 ~~The rights provided by Section 1861.10 shall apply to~~
12 ~~proceedings under this chapter, and may enforce any~~
13 ~~provision of this chapter relating to establishing rates for~~
14 ~~earthquake insurance.~~

15 (d) All materials and documents prepared or used by
16 the authority to determine its rates other than
17 proprietary materials and documents owned or licensed
18 by third parties shall be considered public documents,
19 and copies of the public documents shall be made
20 available to the public for inspection at no charge.
21 Members of the public may purchase public ratemaking
22 related documents from the authority at actual cost.

23 *SEC. 7. Section 10089.13 of the Insurance Code is*
24 *amended to read:*

25 10089.13. (a) One year following its commencement
26 of operations, and annually thereafter by each January 1,
27 the authority shall report to the Legislature and the
28 commissioner on program operations. The report shall
29 include, but shall not be limited to, the financial condition
30 of the authority, an evaluation of the functioning of the
31 authority in light of its stated purposes, and an analysis of
32 any recommended program changes to permit the
33 authority to better fulfill its stated purposes.

34 (b) In verification of the matters set forth in the
35 annual report provided for in subdivision (a), the
36 Department of Finance shall approve qualified auditors
37 selected by the commissioner to examine the books and
38 accounts relating to all matters concerning the financial
39 and program operations of the authority. The
40 commissioner shall file a certified report of the

1 examination with the Legislature within 10 days of its
2 receipt. The expense of examining the books and
3 accounts of the authority shall be paid out of the operating
4 funds of the authority.

5 (c) The authority shall, within 120 days following a
6 seismic event that results in the payment of claims by the
7 authority, and within one year of a major seismic event
8 that results in the payment of claims by the authority,
9 submit to the Legislature and the commissioner a concise
10 written report of program operations related to that
11 seismic event. The reports shall include, but not be
12 limited to, progress on payment of claims, claims
13 payments made and anticipated, and the functioning of
14 the authority in response to the seismic event.

15 ~~(d) This section shall become operative upon~~
16 ~~enactment of the legislation specified in Section 1 of the~~
17 ~~act enacting this section.~~

18 *SEC. 8. Section 10089.14 of the Insurance Code is*
19 *amended to read:*

20 10089.14. ~~(a) Subject to the additional conditions of~~
21 ~~subdivision (b), the authority shall not issue any~~
22 ~~earthquake policy and no insurer shall transfer any~~
23 ~~earthquake risk to the authority until all of the following~~
24 ~~conditions have been met:~~

25 ~~(1) The Internal Revenue Service has determined that~~
26 ~~the authority will be or is exempt from federal income tax.~~

27 ~~(2) Insurers whose cumulative residential property~~
28 ~~insurance market share is more than 75 percent of the~~
29 ~~total residential property insurance market in California,~~
30 ~~measured as of January 1, 1995, have filed letters of intent,~~
31 ~~with no binding contractual obligation, to participate in~~
32 ~~the authority.~~

33 ~~(3) The authority has obtained letters of intent, with~~
34 ~~no binding contractual obligation, for capital~~
35 ~~contributions in the amounts and by the dates set forth in~~
36 ~~Section 10089.15.~~

37 ~~(4) The authority has obtained appropriate risk~~
38 ~~transfer ability in the form of firm reinsurance~~
39 ~~commitments in an aggregate amount of not less than 200~~

1 ~~percent of the total capital contributions committed by~~
2 ~~all participating insurers.~~

3 ~~(b) Upon certification by the commissioner to the~~
4 ~~Legislature that the conditions in paragraphs (1) and (4)~~
5 ~~of subdivision (a) have been met, that letters of intent,~~
6 ~~with no binding contractual obligation, have been~~
7 ~~obtained to fulfill the conditions of paragraphs (2) and~~
8 ~~(3) of subdivision (a), and upon subsequent enactment~~
9 ~~of the legislation specified in Section 1 of the act enacting~~
10 ~~this section, the authority shall be operational.~~

11 ~~(c) Insurers shall not be entitled to transfer any~~
12 ~~earthquake risk to the authority until they have met the~~
13 ~~capital contribution requirements set forth in Section~~
14 ~~10089.15 and No insurer shall be entitled to transfer any~~
15 ~~earthquake risk to the authority pursuant to Section~~
16 ~~10089.27 unless the insurer has signed a contract to~~
17 ~~participate in the authority, is in compliance with the~~
18 ~~capital contribution requirements set forth in Section~~
19 ~~10089.15, and has complied with any related~~
20 ~~requirements set by the board.~~

21 *SEC. 9. Section 10089.15 of the Insurance Code, as*
22 *added by Section 2 of Chapter 944 of the Statutes of 1995,*
23 *is amended to read:*

24 10089.15. (a) Initial operating capital shall be
25 contributed by insurance companies admitted to write
26 residential property insurance in the state. Each insurer
27 that elects to participate in the authority shall contribute
28 as its share of operating capital an amount equal to one
29 billion dollars (\$1,000,000,000) multiplied by the
30 percentage representing that insurer's residential
31 earthquake insurance market share as of January 1, 1994,
32 as determined by the board. A minimum of seven
33 hundred fifty million dollars (\$750,000,000) in
34 commitments shall be required before the authority may
35 become operational.

36 (b) Until the authority becomes operational,
37 contributions of initial operating capital shall be held by
38 the ~~Treasurer~~ *commissioner* in trust for the contributing
39 insurers in the California Earthquake Authority Fund;
40 ~~which is hereby created in the State Treasury, subject to~~

1 reimbursement if the authority does not become
2 operational by March 31, 1996.

3 (c) Because insurers will retain the risk of earthquake
4 losses on individual earthquake policies until they are
5 renewed into the authority, participating insurers may
6 elect to contribute operating capital in 12 installments
7 payable on the first day of each successive ~~calendar~~
8 *calendar* month after the insurer elects to participate.
9 Each insurer shall compute its monthly installment based
10 on the portion of the insurer's earthquake coverage that
11 will be renewed into the authority during the next month.
12 The final installment shall be equal to the excess of the
13 participating insurer's required contribution over the
14 sum of the previous 11 installments. Those insurers that
15 elect after March 31, 1996, to participate in the authority
16 shall make initial capital contributions calculated using
17 their residential earthquake insurance market share as of
18 January 1, 1994, or the date of their election to participate
19 in the authority, whichever contribution amount is
20 greater.

21 *SEC. 10. Section 10089.15 of the Insurance Code, as*
22 *added by Section 7 of Chapter 1166 of the Statutes of 1990,*
23 *is amended and renumbered to read:*

24 ~~10089.15.~~

25 10089.4. To the extent that the coverage is not already
26 provided in the minimum offer of coverage, every insurer
27 shall offer the following optional coverage as part of the
28 offer of coverage as required by Section 10081 only after
29 the insured has completed and the insurer has verified
30 retrofitting of the residential dwelling as described in
31 subdivision (a) of Section 10089.2:

32 Coverage in the amount of ten thousand dollars
33 (\$10,000) for the purpose of reconstruction costs required
34 to bring the residential dwelling on the residential
35 property up to required current local residential dwelling
36 building code standards as required by the local entity as
37 part of the approval of the reconstruction permit process
38 after an earthquake.

39 *SEC. 11. Section 10089.20 of the Insurance Code is*
40 *amended to read:*

1 10089.20. The authority shall renew any policy of basic
 2 residential earthquake insurance, provided the authority
 3 receives payment of the applicable renewal premium on
 4 or before the expiration date stated in the policy. The
 5 authority ~~may~~ shall nonrenew, rescind, or cancel a policy
 6 ~~on the grounds~~ if the property is no longer covered by an
 7 underlying policy of residential property insurance. The
 8 policy issued by the authority shall not provide coverage
 9 in the event that there is no underlying policy of property
 10 insurance at the time of loss. In that case, any unearned
 11 premiums shall be returned to the policyholder on a pro
 12 rata basis.

13 SEC. 12. Section 10089.21 is added to the Insurance
 14 Code, to read:

15 10089.21. The authority is a public instrumentality of
 16 the State of California and the exercise of its powers is an
 17 essential state governmental function. No provision of
 18 law, including, but not limited to, subdivision (b) of
 19 Section 10089.6 and subdivision (h) of Section 10089.7,
 20 shall be construed to affect the status of the authority as
 21 a public instrumentality of the State of California.
 22 Notwithstanding any other provision of law, the authority
 23 is not and shall never be authorized to become a debtor
 24 in a case under the United States Bankruptcy Code (Title
 25 11 of the United States Code) or to make an assignment
 26 for the benefit of creditors or to become the subject of any
 27 similar case or proceeding, nor is the authority subject to
 28 Article 14 (commencing with Section 1010) and Article
 29 14.3 (commencing with Section 1064.1) of Chapter 1 of
 30 Part 2 of Division 1. Notwithstanding any other provision
 31 of law, the commissioner shall not, directly or indirectly,
 32 when exercising the power and authority contained or
 33 referred to in or arising from Section 10089.6, paragraph
 34 (3) of subdivision (e) of Section 10089.7, Section 10089.12,
 35 subdivision (e) of Section 10089.22, subdivision (a) of
 36 Section 10089.35, or any other statute, rule, or regulation,
 37 impede or in any manner interfere with, but shall
 38 affirmatively take all necessary steps to effect, and no
 39 person acting under subdivision (c) of Section 10089.11,
 40 or any other provision of law or principle of equity shall

1 *be permitted in any way to impede or in any manner*
2 *interfere with: (a) the full and timely payment of*
3 *principal, interest, and premiums on revenue bonds of*
4 *the authority issued pursuant to Section 10089.29 and*
5 *amounts due those bond insurers and providers of credit*
6 *support and letters of credit issued pursuant to Section*
7 *10089.50 for those bonds; and (b) any pledge or*
8 *assignment of revenues as security for those payments or*
9 *amounts due, and the full and timely application of those*
10 *pledged or assigned revenues to those payments and*
11 *amounts due, in each case and when due in accordance*
12 *with Section 10089.22, and the terms of the constituent*
13 *instruments defining the rights of the holders of the bonds*
14 *and the providers of bond insurance, credit support, and*
15 *letters of credit.*

16 *Division 3.6 (commencing with Section 810) of Title 1*
17 *of the Government Code shall not apply to acts of the*
18 *authority.*

19 *SEC. 13. Section 10089.22 is added to the Insurance*
20 *Code, to read:*

21 *10089.22. (a) The authority shall not be terminated*
22 *by the Legislature while revenue bonds issued pursuant*
23 *to Section 10089.29 or other debt of the authority issued*
24 *pursuant to Section 10089.50 are outstanding. Unless and*
25 *until the authority is terminated pursuant to Section*
26 *10089.43, the commissioner and the authority shall*
27 *execute assignments and contracts and take all necessary*
28 *steps to assure that all revenue of the authority is paid to*
29 *a trustee appointed by the Treasurer, which trustee may*
30 *be the Treasurer. The revenue of the authority shall be*
31 *pledged and assigned to and held in trust by the trustee*
32 *and invested and disbursed by the trustee, to pay, or to set*
33 *aside funds to pay, principal, interest, and premiums on*
34 *revenue bonds issued pursuant to Section 10089.29 and*
35 *amounts due bond insurers and providers of credit*
36 *support and letters of credit issued pursuant to Section*
37 *10089.50 for those bonds, but only in the manner and in*
38 *accordance with the terms of the constituent instruments*
39 *defining the rights of the holders of bonds of the authority*
40 *and the providers of bond insurance, credit support, and*

1 letters of credit for those bonds. Amounts held by the
2 trustee from time to time after provision for those
3 payments may be disbursed free of trust to the California
4 Earthquake Authority Fund.

5 (b) There is hereby created the California Earthquake
6 Authority Fund, which is not a fund in the State Treasury.
7 Notwithstanding Section 13340 of the Government Code,
8 the fund is continuously appropriated without regard to
9 fiscal years for the purposes of this chapter. The fund shall
10 be administered by the commissioner, subject to the
11 direction of the board, to pay all costs arising from this
12 chapter, including, but not limited to, premiums payable
13 by the authority under contracts of reinsurance, claims
14 arising under policies of basic residential earthquake
15 insurance issued by the authority, operating and other
16 expenses of the authority, and to establish reserves. At the
17 discretion of the commissioner, segregated, dedicated
18 accounts within the fund may be established for those
19 payments.

20 (c) The board may cause moneys in the fund to be
21 invested and reinvested, from time to time, in accordance
22 with paragraph (4) of subdivision (c) of Section 10089.7
23 and subject to subdivision (b) of Section 10089.6. Moneys
24 in the fund and not so invested may be deposited from
25 time to time in (1) financial institutions authorized by law
26 to receive deposits of public moneys, or (2) with the
27 approval of the Treasurer, the Surplus Money Investment
28 Fund as provided in Article 4 (commencing with Section
29 16470) of Division 4 of Title 2 of the Government Code.

30 (d) A national bank shall be custodian of all securities
31 belonging to the fund, except as otherwise provided in
32 this chapter and except as otherwise provided in the
33 constituent instruments that define the rights of the
34 holders of bonds of the authority and the providers of
35 bond insurance, credit support, and letters of credit for
36 those bonds.

37 (e) The board may, in cooperation with the Treasurer,
38 authorize the establishment of an account or fund in the
39 State Treasury in the name of the authority, but money
40 deposited with the Treasurer in that account or fund is

1 *not state money within the intent of Section 16305.2 of the*
2 *Government Code, and Sections 16305.3 to 16305.7,*
3 *inclusive, of the Government Code shall not apply to*
4 *money drawn or collected by the authority.*

5 *SEC. 14. Section 10089.23 of the Insurance Code is*
6 *amended to read:*

7 10089.23. (a) (1) If at any time following the
8 payment of earthquake losses the authority's available
9 capital is reduced to less than two hundred million dollars
10 (\$200,000,000), or if at any time the authority's available
11 capital is insufficient to pay benefits and continue
12 operations, the authority shall have the power to assess
13 participating insurance companies subject to the
14 maximum limits as set forth in this section and Section
15 10089.30. The assessment shall be limited to the amount
16 necessary to pay the outstanding or expected claims of
17 the authority and to return the authority's available
18 capital to two hundred million dollars (\$200,000,000), as
19 determined by the board, subject to approval by the
20 commissioner.

21 (2) Each participating insurer's assessment shall be
22 determined by multiplying its residential earthquake
23 insurance market share, as of December 31 of the
24 immediately preceding year or the most recent year for
25 which premium data not more than one year old are
26 available, by the amount of the total assessment sought by
27 the authority.

28 (3) Maximum permissible insurer assessments
29 pursuant to this section and Section 10089.30, maximum
30 permissible earthquake policyholder assessments
31 pursuant to Section 10089.29, and maximum permissible
32 bond issuances or other debt financing issued or secured
33 by the Treasurer pursuant to Section 10089.29 shall be
34 reduced uniformly by multiplication of the maximum
35 assessments and other amounts provided in those sections
36 by the percentage of the total residential property
37 insurance market share participation attained by the
38 authority upon its commencement, as described in
39 Section 10089.14. The total amount of all assessments
40 levied on participating insurance companies by the

1 authority pursuant to this section shall not exceed three
 2 billion dollars (\$3,000,000,000), ~~less any assessment~~
 3 ~~reduction specified in subdivision (e)~~, regardless of the
 4 frequency or severity of earthquake losses at any and all
 5 times subsequent to the creation of the authority. Once
 6 ~~the authority~~ *a participating insurer* has ~~levied an~~
 7 ~~assessment or assessments equaling~~ *paid amounts equal to*
 8 *its residential earthquake insurance market share*
 9 *multiplied by three billion dollars (\$3,000,000,000) in the*
 10 ~~aggregate on participating insurers~~ pursuant to this
 11 section, ~~less any assessment reduction specified in~~
 12 ~~subdivision (e)~~, the authority's power to assess
 13 ~~participating insurers~~ *that insurer* under this section shall
 14 cease and the authority shall be prohibited from levying
 15 additional assessments *on that insurer* pursuant to this
 16 section.

17 (4) Beginning December 31 of the first year following
 18 commencement of operations, the board shall adjust the
 19 maximum permissible insurer assessments pursuant to
 20 this section and Section 10089.30, the maximum
 21 permissible authority policyholder assessment pursuant
 22 to Section 10089.29, and the maximum permissible bond
 23 issuances or other debt financing issued or secured by the
 24 Treasurer pursuant to Section 10089.29 to reflect the
 25 market share of new insurers entering into the authority
 26 as authorized by Section 10089.16 and participating
 27 insurers withdrawing from the authority as authorized by
 28 Section 10089.19. The adjustments shall be made in the
 29 same manner as authorized by paragraph (3).

30 (b) In the case of any insurer assessment, the authority
 31 shall cause to be sent to each participating ~~company~~
 32 *insurer* a notice of that ~~company's~~ *insurer's* assessment,
 33 and full payment shall be due within 30 days and shall be
 34 overdue after 30 days. Penalties and interest shall be
 35 assessed for late payments in the same manner as
 36 provided for late payments of the insurer gross premium
 37 tax pursuant to Section 12258 of the Revenue and
 38 Taxation Code. The board may waive the penalties and
 39 interest for good cause shown. The board shall make
 40 every effort to assess insurers only for funds reasonably

1 anticipated to be necessary for claims payments and to
2 return the authority's available capital to two hundred
3 million dollars (\$200,000,000).

4 ~~(c) On the first December 31 after two years following~~
5 ~~the date of commencement of authority operations, the~~
6 ~~aggregate assessment authorized under this section shall~~
7 ~~be reduced by an amount equal to the amount of~~ *If the*
8 *average daily balance of the authority's available capital*
9 ~~in excess of one exceeds four billion dollars~~
10 ~~(\$1,000,000,000) (\$4,000,000,000) for any 30-day period~~
11 ~~after the authority has been operative for 10 or more~~
12 ~~years, the aggregate assessment authorized by this~~
13 ~~section shall be reduced by the board to zero dollars (\$0),~~
14 ~~notwithstanding any other provision of this section. Each~~
15 ~~December 31 thereafter, the board shall further reduce~~
16 ~~the aggregate assessment authorized under this section~~
17 ~~by the net increase in available capital in excess of the~~
18 ~~previous level of available capital at which a reduction in~~
19 ~~the aggregate assessment was made. No reduction~~
20 ~~pursuant to this subdivision shall exceed 15 percent of the~~
21 ~~original aggregate assessment in any year of the first~~
22 ~~seven years of operation of the authority. In no event shall~~
23 ~~any reduction previously authorized by the board be~~
24 ~~reinstated. Notwithstanding the other provisions of this~~
25 ~~section, the aggregate assessment authorized by this~~
26 ~~section shall be reduced to zero no later than 10 years~~
27 ~~following the commencement of authority operations.~~

28 *SEC. 15. Section 10089.25 of the Insurance Code is*
29 *amended to read:*

30 *10089.25. Beginning ~~December~~ March 31, 1996 1997,*
31 *and annually thereafter on the 31st of ~~December~~ March,*
32 *the board shall notify each participating insurer of the*
33 *maximum earthquake loss funding assessment level that*
34 *it may be required to meet.*

35 *SEC. 16. Section 10089.26 of the Insurance Code is*
36 *amended to read:*

37 *10089.26. (a) The authority shall ~~be authorized to~~*
38 *issue policies of basic residential earthquake insurance,*
39 *including loss assessment policies for individual*
40 *condominium unit properties, to any owner of a*

1 qualifying residential property, as long as the owner has
2 secured a policy of residential property insurance from a
3 participating insurer.

4 *(b) (1) Subject to subdivision (c), but in no event*
5 *prior to the authority having been in operation for at least*
6 *three years, if the capacity of the authority exceeds*
7 *twelve billion five hundred million dollars*
8 *(\$12,500,000,000) during the last 30 days of any fiscal*
9 *quarter, as measured by the authority's available capital*
10 *and funds available from contracts of reinsurance, capital*
11 *market contracts, and lines of credit secured by*
12 *assessments on earthquake insurance policyholders, and*
13 *available capital constitutes not less than three billion*
14 *dollars (\$3,000,000,000) of that capacity, the authority*
15 *shall offer, within 30 days of the close of that fiscal quarter,*
16 *the sale of a basic residential earthquake insurance policy*
17 *with a deductible of 10 percent of the policy limits. The*
18 *requirement to offer a 10 percent deductible policy shall*
19 *cease whenever the board certifies that the capacity of*
20 *the authority has fallen below twelve billion five hundred*
21 *million dollars (\$12,500,000,000).*

22 *(2) The authority shall, whenever the requirement in*
23 *paragraph (1) applies with respect to the sale of a basic*
24 *residential earthquake insurance policy with a deductible*
25 *of 10 percent of the policy limits, also provide not less than*
26 *seven thousand five hundred dollars (\$7,500) in contents*
27 *coverage, less the applicable deductible.*

28 *(c) The twelve billion five hundred million dollar*
29 *(\$12,500,000,000) threshold described in subdivision (b)*
30 *is based on 100 percent participation by insurers eligible*
31 *to participate in the authority. If the participation level*
32 *is less than 100 percent, the capacity threshold of twelve*
33 *billion five hundred million dollars (\$12,500,000,000) and*
34 *the available capital threshold of three billion dollars*
35 *(\$3,000,000,000) in subdivision (b) shall be reduced*
36 *proportionately to reflect the lower percentage of*
37 *participation.*

38 *SEC. 17. Section 10089.28 of the Insurance Code is*
39 *amended to read:*

1 10089.28. (a) All policies of residential earthquake
2 insurance provided by the authority shall be written by
3 the authority. Authority policies shall be marketed and
4 policyholders serviced by the participating insurer that
5 writes the underlying policy of residential property
6 insurance, and participating insurers shall be reasonably
7 compensated for the claims and policyholder services
8 they provide on behalf of the authority.

9 ~~(b) Upon commencement of operation of the~~
10 ~~authority, the~~ The participating insurer shall notify each
11 ~~insured of its insureds~~ that the authority is the provider
12 of earthquake coverage under the policy. The form and
13 method of notice shall meet standards established by the
14 commissioner by regulation. The authority shall provide
15 to participating insurers appropriate applications and
16 forms and shall maintain records of all policies written,
17 moneys received, and claims paid.

18 *(c) The duty of an agent or broker to investigate the*
19 *financial condition of the authority before placement of*
20 *insurance shall be the same as the duty of an agent or*
21 *broker to investigate the financial condition of an*
22 *admitted insurer before placement of a policy of*
23 *insurance.*

24 SEC. 18. Section 10089.29 of the Insurance Code is
25 repealed.

26 ~~10089.29. (a) If benefits paid by the authority~~
27 ~~following an earthquake event exhaust the total of (1) the~~
28 ~~authority's available capital, (2) the maximum amount of~~
29 ~~all insurer capital contributions and assessments pursuant~~
30 ~~to Sections 10089.15 and 10089.23, (3) all reinsurance~~
31 ~~actually available and under contract to the authority,~~
32 ~~and (4) all capital committed and actually available by~~
33 ~~contract to the authority from private capital markets,~~
34 ~~the Treasurer shall issue revenue bonds or shall issue or~~
35 ~~secure other debt financing of the State of California in~~
36 ~~an amount up to one billion dollars (\$1,000,000,000), in an~~
37 ~~amount determined by the board pursuant to Section~~
38 ~~10089.32. The Treasurer shall make available the net~~
39 ~~proceeds of those bonds as funding for the authority.~~
40 ~~These funds shall not be used to replenish the fund.~~

~~(b) In the event of a bond issuance or debt financing arrangement pursuant to this section, the authority shall have the authority annually to surcharge all authority policyholders to secure funds solely to repay the bonded indebtedness or other debt. The net surcharge collected shall not exceed one billion dollars (\$1,000,000,000), plus interest payable, and in no event shall the surcharge on any individual authority policyholder exceed 20 percent of his or her annual basic residential earthquake insurance premium in any one year.~~

~~(c) Consistent with the provisions of Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.~~

SEC. 19. Section 10089.30 of the Insurance Code is amended to read:

10089.30. If benefits paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, *and* (c) all reinsurance actually available and under contract to the authority, ~~(d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets,~~ the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the maximum limits in this section. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars (\$2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. ~~Once the authority a participating insurer has levied an assessment or assessments equaling paid amounts equal to its residential earthquake insurance market share~~

1 *percentage multiplied by two billion dollars*
2 *(\$2,000,000,000) in the aggregate on participating*
3 *insurers pursuant to this section, the authority's power to*
4 *assess participating insurers that insurer under this*
5 *section shall cease and the authority shall be prohibited*
6 *from levying additional assessments on that insurer*
7 *pursuant to this section. The board shall make*
8 *assessments pursuant to this section by the same method*
9 *set forth in paragraph (2) of subdivision (a) of Section*
10 *10089.23, in proportion to each participating insurer's*
11 *residential earthquake insurance market share. The*
12 *assessment shall be limited to the amount necessary to*
13 *pay the expected claims of the authority and return the*
14 *authority's available capital to two hundred million*
15 *dollars (\$200,000,000), as determined by the board,*
16 *subject to approval by the commissioner.*

17 *SEC. 20. Section 10089.31 is added to the Insurance*
18 *Code, to read:*

19 *10089.31. (a) If benefits paid by the authority*
20 *following an earthquake event exhaust the total of (1) the*
21 *authority's available capital, (2) the maximum amount of*
22 *all insurer capital contributions and assessments pursuant*
23 *to Sections 10089.15 and 10089.23, (3) all reinsurance*
24 *actually available and under contract to the authority, (4)*
25 *the maximum amount of all insurer assessments pursuant*
26 *to Section 10089.30, and (5) all capital committed and*
27 *actually available by contract to the authority from*
28 *private capital markets, the Treasurer may sell*
29 *investment grade revenue bonds or sell or secure other*
30 *debt financing or any combination of the revenue bonds*
31 *or debt financing in an amount up to one billion dollars*
32 *(\$1,000,000,000), in an amount determined by the board*
33 *pursuant to Section 10089.32. The Treasurer shall make*
34 *available the net proceeds of the revenue bonds or debt*
35 *financing as funding for the authority. These funds shall*
36 *not be used to replenish the fund. The Treasurer may sell*
37 *bonds for the purpose of refunding the revenue bonds or*
38 *other debt financing when authorized to do so by the*
39 *board, and the surcharge authorized by this section may*
40 *be used to repay that refunding.*

1 (b) In the event of a revenue bond sale or debt
2 financing arrangement pursuant to this section, the
3 authority shall have the authority annually to surcharge
4 all authority policyholders to secure funds solely to repay
5 the bonded indebtedness or other debt. The net
6 surcharge collected shall not exceed one billion dollars
7 (\$1,000,000,000), plus costs of issuance and sale of those
8 revenue bonds or other debt and amounts paid or payable
9 to bond issuers and providers of credit support and letters
10 of credit for and interest on those revenue bonds or other
11 debt. In no event shall the surcharge on any individual
12 authority policyholder exceed 20 percent of his or her
13 annual basic residential earthquake insurance premium
14 in any one year.

15 (c) In the event the Treasurer is unable to obtain a
16 letter of credit covering the entire commitment for any
17 period set forth in subdivision (a), the Treasurer shall
18 charge the authority a reasonable fee for the
19 commitment contained in subdivision (a).

20 (d) Consistent with the provisions of Section 676, the
21 authority shall cancel the policy of basic residential
22 earthquake insurance if the policyholder fails to pay the
23 earthquake policy surcharge authorized by the authority,
24 and the insurer shall cancel the policy of residential
25 property insurance if the policyholder fails to pay the
26 policy surcharge authorized by the authority.

27 SEC. 21. Section 10089.33 of the Insurance Code is
28 repealed.

29 ~~10089.33. If the average daily balance of the~~
30 ~~authority's available capital exceeds six billion dollars~~
31 ~~(\$6,000,000,000) for the last 180 days of any calendar year,~~
32 ~~the board shall relieve all participating insurers of their~~
33 ~~obligation to pay additional earthquake loss assessments~~
34 ~~under this chapter, by an amount equal to the amount of~~
35 ~~available capital in excess of six billion dollars~~
36 ~~(\$6,000,000,000), as provided in this subdivision. Each~~
37 ~~December 31 thereafter, the board shall further reduce~~
38 ~~the aggregate assessment authorized under this section~~
39 ~~by the net increase in available capital in excess of the~~
40 ~~previous levels of available capital at which a reduction~~

1 ~~in the aggregate assessment was made. No reduction~~
2 ~~pursuant to this subdivision shall exceed 15 percent of the~~
3 ~~original aggregate assessment in any year of operation of~~
4 ~~the authority. In no event shall any reduction previously~~
5 ~~authorized by the board be reinstated.~~

6 SEC. 22. Section 10089.35 of the Insurance Code is
7 amended to read:

8 10089.35. (a) If at any time *the board determines that*
9 *all the authority's available capital has been* may be
10 exhausted and no source of additional funds such as
11 assessments, reinsurance, or private ~~capital~~ capital
12 market moneys ~~is~~ *will be* available to the authority *to pay*
13 *policyholder claims*, the board shall draw up and present
14 to the commissioner a plan to pay *policyholder* claims on
15 a pro rata basis or in installment payments. The board
16 shall maintain sufficient capital to ensure the continued
17 operation of the authority for the purpose of ~~paying~~
18 ~~claims and other related obligations~~ *implementing the*
19 *proration or installment plan*. At this point, an insurer
20 shall no longer be able to meet its statutory obligation to
21 offer earthquake insurance coverage by placement in the
22 authority.

23 ~~(b)~~

24 *Upon presentation of that plan to prorate or pay in*
25 *installments, the commissioner shall order the authority*
26 *to cease accepting new earthquake insurance policies and*
27 *may apply to the superior court for orders or injunctions*
28 *as the commissioner deems necessary to prevent any*
29 *event or occurrence adverse to the authority, including,*
30 *but not limited to, any or all of the following:*

31 (1) *Interference with the commissioner's*
32 *consideration and implementation of a plan for pro rata*
33 *or installment payment of policyholder claims under this*
34 *section.*

35 (2) *Interference with or attachment of the assets of the*
36 *authority.*

37 (3) *Institution or prosecution of any actions or*
38 *proceedings against the authority.*

1 (4) The obtaining of preferences, judgments,
2 attachments, or other liens or levies against the authority
3 or its assets.

4 (5) The withholding by a participating insurer or any
5 other person of any premium, surcharge, assessment, or
6 other amount lawfully due and owing to the authority.

7 (b) Entry of orders or injunctions obtained by the
8 commissioner upon the application permitted by
9 subdivision (a) shall not vest the superior court with
10 general jurisdiction over the business or assets of the
11 authority or any plan for the pro rata payment of
12 policyholder claims under this section, and the superior
13 court's jurisdiction shall be limited to the entry and
14 enforcement of those orders and injunctions.

15 (c) The State of California shall have no liability for
16 payment of claims in excess of funds available pursuant to
17 this chapter. The State of California, and any of the funds
18 of the State of California, shall have no obligations
19 whatsoever for payment of claims or costs arising from
20 this act, except as specifically provided in this act.

21 SEC. 23. Section 10089.40 of the Insurance Code is
22 amended to read:

23 10089.40. (a) Rates shall be established by the
24 authority ~~shall be actuarially sound and shall not be~~
25 ~~excessive, inadequate, or unfairly discriminatory in~~
26 *accordance with Article 10 (commencing with Section*
27 *1861.01) of Chapter 9 of Part 2.* Rates shall be established
28 based on the best available scientific information for
29 assessing the risk of earthquake loss. Factors the board
30 shall consider in adopting rates include, but are not
31 limited to, the following:

32 (1) Location of the insured property and its proximity
33 to earthquake faults and to other geological factors that
34 affect the risk of earthquake or damage from earthquake.

35 (2) The soil type on which the insured dwelling is built.

36 (3) Construction type and features of the insured
37 dwelling.

38 (4) Age of the insured dwelling.

1 (5) The presence of earthquake hazard reduction
2 factors, including those set forth in subdivision (a) of
3 Section 10089.2.

4 (b) The classification system established by the board
5 shall not be adjusted or tempered in any way to provide
6 rates lower than are justified for classifications that
7 present a high risk of loss or higher than are justified for
8 classifications that present a low risk of loss.

9 (c) Policyholders who have retrofitted their homes to
10 withstand earthquake shake damage according to
11 standards and to the extent set by the board shall enjoy
12 a premium discount or credit of not less than 5 percent
13 on—~~he~~ *the* authority-issued policy of residential
14 earthquake coverage, as long as the discount or credit is
15 determined actuarially sound by the authority.

16 (d) All rates shall be approved by the commissioner
17 prior to their use.

18 *SEC. 24. Section 10089.41 of the Insurance Code is*
19 *amended to read:*

20 10089.41. (a) The offer of an authority policy by a
21 participating insurer shall constitute a mode of insurer
22 compliance with Chapter 8.5 (commencing with Section
23 10081) of Part 1 of Division 2, and as set forth in Section
24 10084.

25 (b) If the authority ceases operation for any reason,
26 including, but not limited to, repeal of this chapter or
27 insolvency of the authority, participating carriers shall no
28 longer be able to satisfy the requirement to offer
29 residential earthquake insurance coverage by placement
30 within the authority, and shall offer coverage by another
31 mode authorized pursuant to Chapter 8.5 (commencing
32 with Section 10081) of Part 1 of Division 2 to those
33 policyholders for whom they write the underlying
34 *policies of residential property insurance.*

35 *SEC. 25. Section 10089.50 of the Insurance Code is*
36 *amended to read:*

37 10089.50. The ~~authority~~ *Treasurer* may from time to
38 time enter into one or more credit facilities permitting
39 the authority to draw an amount up to one billion dollars
40 (\$1,000,000,000) with payment, interest rate, indemnity,

1 compensation, security, default, remedy, and other terms
2 and conditions as determined by the authority. All
3 drawings under these credit facilities shall be available as
4 funding for the authority as provided in Section 10089.29.

5 *SEC. 26. Section 10089.52 is added to the Insurance*
6 *Code, to read:*

7 *10089.52. Nothing in Section 10089.50 or 10089.51 is*
8 *intended to limit the applicability to the authority of any*
9 *provision of Section 5450 or subdivision (c) of Section*
10 *5922 of the Government Code.*

11 *SEC. 27. Section 10089.53 is added to the Insurance*
12 *Code, to read:*

13 *10089.53. (a) Any insurer that withdraws from the*
14 *authority under Section 10089.19 while bonds or other*
15 *debt is outstanding shall impose annually a premium*
16 *surcharge on each policy of residential earthquake*
17 *insurance written by it equal in percentage amount,*
18 *calculated as a percentage of the basic residential*
19 *earthquake insurance premium, to the percentage*
20 *amount of the surcharge being imposed in that year by*
21 *the authority pursuant to subdivision (b) of Section*
22 *10089.29. That insurer shall remit promptly all those*
23 *surcharges collected by it to the trustee appointed*
24 *pursuant to Section 10089.22. The surcharges shall be used*
25 *solely to repay the bonded indebtedness or other debt*
26 *issued pursuant to subdivision (a) of Section 10089.29. If*
27 *the sum of the surcharges remitted to the trustee*
28 *pursuant to this section plus the amount of the surcharges*
29 *imposed by the authority pursuant to subdivision (b) of*
30 *Section 10089.29 would exceed the amount authorized by*
31 *that provision, then surcharges of the authority shall be*
32 *reduced by an amount equal to that excess.*

33 *(b) Should the Legislature and Governor approve*
34 *legislation that causes the authority to cease operation*
35 *while bonds or other debt are outstanding, participating*
36 *insurers shall impose annually a premium surcharge on*
37 *each policy of residential earthquake insurance written*
38 *by them equal in percentage amount, calculated as a*
39 *percentage of the basic residential earthquake insurance*
40 *premium, to the percentage amount of the surcharge*

1 being imposed in that year by the authority pursuant to
2 subdivision (b) of Section 10089.29. Those insurers shall
3 remit promptly all these surcharges collected by them to
4 the trustee appointed pursuant to Section 10089.22. The
5 surcharges shall be used solely to repay the bonded
6 indebtedness or other debt issued pursuant to subdivision
7 (a) of Section 10089.29. If the sum of the surcharges
8 remitted to the trustee pursuant to this section plus the
9 amount of the surcharges imposed by the authority
10 pursuant to subdivision (b) of Section 10089.29 would
11 exceed the amount authorized by that provision, then
12 surcharges of the authority shall be reduced by an amount
13 equal to that excess.

14 SEC. 28. This act is an urgency statute necessary for
15 the immediate preservation of the public peace, health,
16 or safety within the meaning of Article IV of the
17 Constitution and shall go into immediate effect. The facts
18 constituting the necessity are:

19 In order to promote the restoration of affordable and
20 available homeowners' insurance for all Californians,
21 provide protection from the devastating and catastrophic
22 losses caused by earthquakes, and continue California's
23 economic growth, it is necessary that this act take effect
24 immediately.

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Assembly, April 18, 1996 (JR 11)**